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EXAMINER

CARDENAS NAVIA, JAIME F

ART UNIT

PAPER NUMBER

3624

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/712,816	<b>Applicant(s)</b> ROYALE ET AL.	
	<b>Examiner</b> Jaime Cardenas-Navia	<b>Art Unit</b> 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Introduction***

1. This **FINAL** office action is in response to communications received on September 3, 2008. Claims 1-14 have been amended. Claim 15 has been added. Claims 1-15 are pending.

*Response to Amendment*

2. Applicant's amendments to the claims are **sufficient to overcome the objections to the claims** as set forth in the previous office action. However, **new grounds of objection to the claims have been necessitated by amendment.**
3. Applicant's amendments to the drawings are **sufficient to overcome the objections to the drawings** as set forth in the previous office action.
4. Applicant's amendments to the specification are **sufficient to overcome the objections to the specification** as set forth in the previous office action.
5. Applicant's amendments to the claims are **NOT sufficient to overcome all the 35 U.S.C. § 112, second paragraph, rejections** as set forth in the previous office action.
6. Applicant's amendments to the claims are **sufficient to overcome the 35 U.S.C. § 101 rejections** set forth in the previous office action. However, **new grounds of rejection under 35 U.S.C. § 101 have been necessitated by amendment.**
7. **New grounds of rejection under 35 U.S.C. § 112, first paragraph, have been necessitated by amendment.**

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***Claim Objections***

8. **Claim 15 is objected to** because of the following informalities: "schedules of menu items, staff, service times, prices for" should be changed to "schedules of menu items, staff, service times, and prices for".

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***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. **Claim 15 is rejected** under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

**Regarding claim 15**, there is no mention in Applicant's specification of generating prices for each dining facility. For purposes of examination, generating prices has been removed from claim language.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. **Claims 1-14 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Regarding claims 1, 3, and 9**, "needs" is a relative term which renders the claim indefinite. It is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. There are still several instances of "needs" that have not

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been replaced. For purposes of examination, each instance of "needs" has been interpreted as "preferences".

***Claim Rejections - 35 USC § 101***

13. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

14. **Claims 1-14 are rejected** under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

It is unclear whether Applicant is claiming a system or software. If Applicant is claiming a system, then the claims are non-statutory because a system must be clearly defined as comprising more than one element. If Applicant is claiming software, then the claims are non-statutory for the reasons discussed below.

A computer program does not fall into one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter). Software, programming, instructions or code not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in a computer. When such descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases. Furthermore, software, programming, instructions or code not claimed as being computer executable are not statutory because they are not capable of causing functional change in a computer. In contrast, when a claimed computer-readable medium encoded with a computer program defines structural and functional interrelationships between the computer and the program, and the computer is capable of executing the program, allowing the program's functionality to be realized, the program will be statutory.



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For purposes of examination, the claims have been interpreted as a properly claimed computer program product.

***Response to Arguments***

15. Applicant's arguments have been fully considered by the Examiner. In particular, Applicant argues regarding independent claims 1, 3, and 9 that (1) neither Halverson nor Snyder teach or suggest correlating each opportunity to an available service wherein the scope and objective of each service is determined. Additionally, Applicant argues that (2) all dependent claims are allowable as a result.

**Regarding argument (1)**, Examiner respectfully disagrees. Halverson clearly teaches determining the scope and objective of each current service. For example, in par. 39, Halverson discusses how model data **330** is obtained from actual dining events (current services). For the current service of seating, seating preferences (scope) are discussed with regards to satisfying social as well as non-social diners (objective).

**Regarding argument (2)**, Examiner respectfully disagrees as per the argument above.

***Claim Rejections - 35 USC § 102***

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. **Claims 1-9, 12, and 14 are rejected** under 35 U.S.C. 102(b) as being anticipated by Halverson (US 2002/0077843 A1).

**Regarding claim 1**, Halverson teaches a computer system programmed with a set of instructions for assessing institutional needs (par. 2) to carry out the following steps:

a) defining at least a primary and a secondary characteristic used for segmenting a community (par. 39, several examples of segmenting are given, such as primary segmenting based on preference for group or individual seating, and then secondary segmenting based on preference for music or sounds);

b) segmenting the community by said primary characteristic into one or more target market units (par. 39);

c) for each target market unit:

1) assessing preferences of a population therein (par. 39, lines 9-11, fig. 8-12 are surveys and preferences);

2) comparing the preferences to current services to identify each preference not met by current services as an opportunity (par. 39, lines 21-46, as an example, seating preferences are identified as a preference not being met and interpreted as an opportunity by management to increase value of the dining experience);

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3) correlating each opportunity to an available service (par. 39, lines 21-46, seating preference was correlated to the service of offering individual or group seating, par. 43, 44) wherein the scope and objective of each current service is determined (par. 39, model data **330** is obtained from actual dining events (current services). For the current service of seating, seating preferences (scope) are discussed with regards to satisfying social as well as non-social diners (objective)).

**Regarding claim 2**, Halverson teaches wherein following step b), each target market unit is further segmented by the secondary characteristic, wherein step c) is carried out within each of said further segmented target markets (par. 39, the target market is further segment based on preference for music or sounds, par. 39, lines 9-11, fig. 8-12, preferences are assessed , par. 39, lines 46-49, opportunities are identified and correlated to an available service, par. 43, 44).

**Regarding claim 3**, Halverson teaches a computer system programmed with a set of instructions for assessing institutional food-service preferences (par. 2) according to the following steps:

a) defining a plurality of target market units (par. 39, several examples of segmenting are given, such as primary segmenting based on preference for group or individual seating, and then secondary segmenting based on preference for music or sounds);

b) defining a plurality of day-parts (fig. 12);

c) for each target market unit at each day-part:

1) assessing the preferences of the population therein (par. 39, lines 9-11, fig. 8-12 are surveys and preferences);

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2) comparing the preferences to current services to identify each preference not met by current services as an opportunity (par. 39, lines 21-46, as an example, seating preferences are identified as a preference not being met and interpreted as an opportunity by management to increase value of the dining experience);

3) correlating each opportunity to an available service (par. 39, lines 21-46, seating preference was correlated to the service of offering individual or group seating, par. 43, 44) wherein the scope and objective of each current service is determined (par. 39, model data 330 is obtained from actual dining events (current services). For the current service of seating, seating preferences (scope) are discussed with regards to satisfying social as well as non-social diners (objective)).

**Regarding claim 4**, Halverson teaches wherein each of said plurality of day-parts is based on traditional meal times (fig. 12).

**Regarding claim 5**, Halverson teaches wherein each of said plurality of day-parts is modified in accordance with information regarding eating times of the institute's population (fig. 12).

**Regarding claim 6**, Halverson teaches wherein each target market unit is defined by grouping geographically proximate areas with similar populations and uses into a single unit (par. 58-61, the example is given where for a state fair, geographically proximate areas with similar populations and uses are grouped into a single unit, e.g. nearby people who like arts and crafts, nearby people who like large animal exhibits, etc.).

**Regarding claim 7**, Halverson teaches wherein at least one target market unit is further divided into at least one sub-unit based upon a distinct use or population within a target market

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unit (par. 39, the target market of people who have seating preferences is further segmented into populations with a preferences for music or sounds).

**Regarding claim 8**, Halverson teaches after the correlation step, the step of producing a report indicating the correlated available services as recommended services (fig. 6, par. 42, claim 1, reports provide correlated available services, which are acted on by the manager, par. 58 is an example of a report with correlated available services).

**Regarding claim 9**, Halverson teaches a computer system programmed with a set of instructions for assessing institutional food service preferences on a campus (par. 2) according to the following steps:

a) gathering information concerning at least one of :

- 1) campus geography;
- 2) campus architecture;
- 3) population (fig. 12, contains location, time, purpose, and schedule information of individuals);
- 4) food service preferences (fig. 8-11;
- 5) existing services (par. 43, for example, available meal locations, capabilities and equipment of the facilities (sound generation), fig. 8-11, surveys provide satisfaction);

b) defining a plurality of target market units, and optionally sub-units, based upon information gathered (par. 39, several examples of segmenting into target market units are taught, such as forming units based on preference for group or individual seating, and then forming sub-units based on preference for music or sounds);

c) defining a plurality of day-parts based on traditional meal-times, optionally

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modified by information gathered (fig. 12); and

d) for each target market unit at each day-part:

1) assessing the preferences of the population therein (par. 39, lines 9-11, fig. 8-12 are surveys and preferences),

2) identifying each preference not met by current services as an opportunity (par. 39, lines 21-46, as an example, seating preferences are identified as a preference not being met and interpreted as an opportunity by management to increase value of the dining experience),

3) correlating each opportunity to an available service (par. 39, lines 21-46, seating preference was correlated to the service of offering individual or group seating, par. 43, 44) wherein the scope and objective of each current service is determined (par. 39, model data 330 is obtained from actual dining events (current services). For the current service of seating, seating preferences (scope) are discussed with regards to satisfying social as well as non-social diners (objective)), and

4) reporting each correlated available service as a recommended service (fig. 6, par. 42, claim 1, reports provide correlated available services, which are acted on by the manager, par. 58 is an example of a report with correlated available services).

**Regarding claim 12**, Halverson teaches wherein said information on population includes one or more of: location, time, purpose, and schedules of individuals (fig. 12, contains location, time, purpose, and schedule information of individuals).

**Regarding claim 14**, Halverson teaches wherein said information on existing services includes one or more of: location of services, on-campus services, off-campus services,

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satisfaction, and type of services (par. 43, for example, available meal locations, capabilities and equipment of the facilities (sound generation), fig. 8-11, surveys provide satisfaction).



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***Claim Rejections - 35 USC § 103***

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. **Claims 10, 11, and 13 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Halverson (US 2002/0077843 A1) as applied to claim 9, in view of Snyder et al. (US 2008/0057482 A1).

**Regarding claim 10**, Halverson does not expressly teach wherein said information on campus geography includes one or more of: location of buildings, roads, landscape features, traffic patterns, travel time between buildings, and obstacles or impediments to travel.

Snyder teaches wherein said information on campus geography includes one or more of: location of buildings, roads, landscape features, traffic patterns, travel time between buildings, and obstacles or impediments to travel (par. 16, information on location of buildings and travel time between buildings is collected).

The inventions of Halverson and Snyder pertain to collecting demographic information to optimize the services of an institution. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Snyder does not teach away from or contradict Halverson, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would

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have been obvious to combine the teachings, motivated by increased efficiency in the services of the institution provided by taking into account as much information about the community as possible, as recognized by Halverson (par. 43, lines 59-62).

**Regarding claim 11**, Halverson does not expressly teach wherein said information on campus architecture includes one or more of: use, location, attendance rates, and schedule of each building.

Snyder teaches wherein said information on campus architecture includes one or more of: use, location, attendance rates, and schedule of each building (par. 16, information on preferences and resource-based use of buildings is collected, par. 170, location of buildings is gathered to calculate distance between buildings, par. 15, collection of attendance information, par. 16, schedule of classes in building is collected and optimized).

The inventions of Halverson and Snyder pertain to collecting demographic information to optimize the services of an institution. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Snyder does not teach away from or contradict Halverson, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by increased efficiency in the services of the institution provided by taking into account as much information about the community as possible, as recognized by Halverson (par. 43, lines 59-62).

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**Regarding claim 13**, Halverson teaches wherein said information on food service needs and desires includes one or more of: dining style, meal-type, grocery, food types, desired services, desired eating and snacking times, and food preferences (fig. 8-12).

20. **Claim 15 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Halverson (US 2002/0077843 A1).

**Regarding claim 15**, Halverson teaches a computer system for managing a university food service system comprising:

a database (fig. 1); and

a computer programmed to optimize the university food service system based on responses to surveys of patrons and potential patrons (Abstract, fig. 1, 3),

the database including records of facilities, staff, menu options, and times of services (par. 19, facilities capabilities, staff skills, experiences, and preferences, fig. 8-11 (menu options), fig. 12 (times or services)), and the responses comprising patron and potential patron preferences (fig. 8-12), wherein the computer system generates schedules of menu items, staff, and service times for each dining facility by maximizing a common thread between the different groups (par. 41, 7, 39, fig. 8-12 surveys used to determine menu, staff for dining event, service times, and prices by using bands of agreement (par. 19)).

Halverson does not expressly teach the database including records of university calendar.

Official notice is given that university calendars are distributed and updated on a regular basis and are easily stored in a database.

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All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the teaching in Halverson of providing dining options to schools (par. 15, 39).

***Conclusion***

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaime Cardenas-Navia whose telephone number is (571)270-1525. The examiner can normally be reached on Mon-Fri, 10:30AM - 7:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 28, 2008

/J. C./

Examiner, Art Unit 3624

/Bradley B Bayat/

Supervisory Patent Examiner, Art Unit 3624